

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

S.A.O. No.35 of 1999
Date of Decision : 2.11.2007

Punjab State Electricity Board, Patiala through its Secretary, Patiala & Ors.

.....Appellants

Versus

Swaran Singh & Anr.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. Rajan Gupta, advocate
for the appellants.

VINOD K. SHARMA, J. (ORAL)

By way of this appeal the appellants have challenged the order passed by the learned District Judge, Ropar dismissing the application moved by the appellants for restoration of the appeal, which was dismissed in default on 3.1.1994.

Plaintiff respondent filed a suit for declaration claiming that he be considered and promoted as an Electrician from the date when his junior Ram Lakhan defendant No.4 was promoted as such.

The suit was contested by the appellants by taking preliminary objection that suit is not maintainable and that the plaintiff respondents had no locus standi to file the suit. The jurisdiction of the Civil Court to entertain and try the suit was also challenged. The plea of estoppel was also raised. On merits, it was claimed that defendant No.4 was senior to the plaintiff as he had relinquished his claim of seniority.

The learned trial Court was pleased to decree the suit and declaration was issued to consider the plaintiff respondent for the post of

Electrician by treating him to be senior to defendant No.4 Sh. Ram Lakhan. It was also ordered that claim be considered from the date when the vacancy fell vacant.

The appellants preferred an appeal against the judgment and decree passed by the learned trial Court, however, on account of non-appearance of the counsel for the appellant, the appeal was dismissed in default on 3.1.1994.

On 1.4.1994, an application was moved by the appellant for restoration of the appeal dismissed in default on the plea that Sewa Singh, Advocate, counsel for the appellant was appointed as Chairman, Improvement Trust, Ropar and, therefore, he could not appear in the case on the date fixed. It was also the case of the appellant that it came to know about the order of dismissal in default on 28.2.1994 and the application was moved immediately thereafter on 1.3.1994.

The application was contested by the respondent-plaintiff on the plea that the application for restoration was barred by limitation. The plaintiff respondent, however, admitted that Mr. Sewa Singh, Advocate was appointed as Chairman, Improvement Trust, Ropar. It was also the case of the appellant he failed to appear intentionally on the date fixed. It was denied that the appellant got the knowledge of dismissal on 28.2.1994 as mentioned in the application.

The appellant in support of its case relied upon the judgment of this Court in the case of *Madan Lal of Amritsar Vs. Kharaiti Ram and others 1969(1) P.L.R. 52* to contend that the limitation was to be counted from the date of knowledge. However, the learned lower appellate Court pleased to distinguish the said authority by placing reliance on the judgment

of the Hon'ble Allahabad High Court in the case of ***Ram Shanker and others Vs. Lalta Prasad and another AIR 1964 Allahabad 124***, wherein it was laid down that the application for restoration is required to be moved within 30 days of passing of order.

The learned counsel appearing on behalf of the appellant contends that the learned lower appellate Court committed an error of law in dismissing the application as time barred. Once the date of knowledge was not disputed it was not open to the learned lower appellate Court to have distinguished the law laid down by this Court merely on the ground that said case arose out of a suit and not appeal.

I find force in the contention raised by the learned counsel for the appellant. The application for restoration of suit or appeal dismissed in default is required to be filed within period of 30 days and the said period has to be counted from the date of order and in case the knowledge of the said order is subsequent to the passing of the order then the period is counted from the date of knowledge. The law laid down by this Court in the case of ***Madan Lal of Amritsar Vs. Kharaiti Ram and others*** (Supra) is applicable with equal force to restoration of an appeal dismissed in default.

For the reasons stated above, the appeal is allowed. The impugned order is set aside and the application moved by the appellant for restoration of appeal stands allowed.

The learned District Judge may now consider the appeal on merit in accordance with law.

02.11.2007
'sp'

(VINOD K. SHARMA)
JUDGE